

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 • FAX: (217) 785-4111

MEMO

RE: Technical assistance meeting with representatives of Project #10-089
Mercy Crystal Lake Hospital and Medical Center

Location: **Teleconference:** locations 122 South Michigan Avenue, Suite 700,
Chicago, Illinois and 525 West Jefferson Street, 2nd Floor Springfield,
Illinois

Date: July 7, 2011

Time: 2:30pm -3:30pm

Attendees:

Illinois Health Facility Service Review Board ("IHFSRB")

- Courtney Avery, Administrator
- Frank Urso, General Counsel IHFSRB
- Juan Morado, Asst. General Counsel IHFSRB
- Bill Dart Deputy Director Illinois Department of Public Health ("IDPH")
- Michael Constantino IDPH Project Review
- George Roate IDPH Project Review

Mercy Crystal Lake Hospital and Medical Center

- Richard Gruber, Vice President, Mercy
- Dan Colby, Vice President, Mercy
- Linas Grikis, Attorney at Law, McDermott, Will & Emery
- Charles Foley, CON Consultant, Charles H. Foley & Associates, Inc
- John Kniery, CON Consultant, Charles H. Foley & Associates, Inc

DISCUSSION:

The purpose of the technical meeting was to discuss the potential modification of Project #10-089 Mercy Crystal Lake Hospital and Medical Center after the receipt of an intent to deny at the June 28th State Board meeting. A project that receives an intent to deny from the State Board has 14 days to inform the State Board whether the applicants will be submitting supplemental information. If supplemental information is to be submitted that information must be received within 30 days of the issuance of the intent to deny. The applicants have informed the State Board that they will be submitting additional information within the 30 day timeframe. However the additional information could significantly modify the proposed project. Under current State Board rules an Intent to Deny limit public comment to the applicants only.

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Under current State Board rules there are two types of modifications. Type A modifications that are detailed at 77 IAC 1130.650 and Type B modifications which includes all other modifications. Type A modifications require Notice for an Opportunity for a Public Hearing, Type B modifications do not. The applicants are considering reducing the proposed project from 100 medical surgical beds to 46 medical surgical beds and 8 intensive care beds to 4 intensive care beds. The obstetric beds will remain at 20 beds. This modification would reduce the total number of beds from 128 beds to 70 beds a reduction of 58 beds. The cost of the project will be reduced from approximately \$200 million to approximately \$115 million. A preliminary assessment by the State Board staff would indicate that this would be a Type B modification and would not result in another Notice for an Opportunity for a Public Hearing. However it was noted by the State Board legal counsel because of the extent of the modification a public hearing might be necessary. The legal staff also advised the applicants that if a hearing was requested we may have to have one.

The State Board staff discussed with the applicants the necessary criterion that would need to be addressed because of the modification. It is the staff's opinion that the applicants need to address all of the criteria that were submitted with the original application and supplemental material. The staff requested that the applicants submit a "clean" application essentially a new application with the modification in order for the State Board members to have a clean document to review. The modification needs to be filed within 30 days of the notice of intent to deny which is 5:00 pm July 28, 2011. The staff also requested that the applicants address the Safety Net Impact Response submitted by Arnstein & Lehr to the State Agency on June 2, 2011 and the 2010 McHenry County Healthy Community Study prepared by the University of Illinois. The staff also explained the Inventory of Health Care Facilities and Services and Need Determination will not be available until the end of the year along with the Hospital Profile Information.

Referenced

- 77 IAC 1130.650 – Modification of an Application
- 77 IAC 1130.670 – Intent to Deny
- 77 IAC 1130.950 – Public Comment
- 06/02/2011 – Safety Net Impact Response from Arnstein & Lehr
- 2010 McHenry County Health Community Study – Executive Summary

Constantino, Mike

From: John Kniery [JKniery@foleyandassociates.com]
Sent: Tuesday, July 26, 2011 1:57 PM
To: Constantino, Mike
Cc: Grikis, Linas
Subject: FW: HFSRB Project number 10-089 Mercy Crystal Lake Hospital and Medical Center
Attachments: notes to technical assistance meeting.pdf

Let me know if you get this and if you can open it. If not I will hand deliver. Thanks.

From: John Kniery
Sent: Wednesday, July 20, 2011 10:57 AM
To: 'Constantino, Mike'
Cc: Gruber, Rich; 'Colby, Dan'; 'Grikis, Linas'; Foley
Subject: HFSRB Project number 10-089 Mercy Crystal Lake Hospital and Medical Center

Michael: attached hereto are the Applicant's notes to the technical assistance meeting that we had on the above referenced project. Thank you, your staff and your associates for providing us with the technical assistance as requested. If you should have any questions or concerns with the notes provided please advise. Thanks again.

John P. Kniery
Health Care Consultant
Charles H. Foley & Associates, Inc.
1638 So. MacArthur Boulevard
Springfield, Illinois 62704
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CHARLES H. FOLEY & ASSOCIATES INC.

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SENT VIA ELECTRONIC MAIL

July 16, 2011

Mr. Michael Constantino
Illinois Health Facilities and Services Review Board
ILLINOIS DEPARTMENT OF PUBLIC HEALTH
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: HFSRB Project Number 10-089 (the "Project"),
Mercy Crystal Lake Hospital and Medical Center
(the "Applicant").

Dear Mr. Constantino:

Please accept this correspondence as my notes of the technical assistance meeting for the Project held on July 7, 2011 at 2:30 PM in both the Chicago and Springfield State offices.

In attendance in Chicago:

State officials: Frank Urso-General Counsel (HFSRB), Courtney Avery-Administrator (HFSRB), Juan Morado-Assistant General Counsel (HFSRB)

Applicant representatives: Charles Foley-CON Consultant (Charles H. Foley & Assoc. Inc.), Linas Grikis-Attorney at Law (McDermott, Will & Emery), Rich Gruber-Vice President (Mercy Health Systems), and Dan Colby-Vice President (Mercy Health Systems)

In attendance in Springfield:

State Officials: Bill Dart-Deputy Director (IDPH), Michael Constantino-Chief Project Reviewer (IDPH), George Roate-Project Reviewer (IDPH)

Applicant Representative: John P. Kniery-CON Consultant (Charles H. Foley & Assoc. Inc.)

The technical assistance meeting was requested by Mr. Foley on behalf of the Applicant to walk through the process and procedure the Applicant would need to follow should it elect to modify the Project subsequent to the HFSRB's issuance of an Intent-to-Deny after initial consideration of the Project. Mr. Foley and Mr. Grikis detailed that the Applicant was considering a Project modification consistent with the alternative already presented as the Applicant's second alternative considered under the CON application criterion "1110.230c Alternative to the Project." The proposed modification would reduce the project from 128 beds down to 70 beds (from 100 M/S down to 46 M/S, from 8 ICU beds to 4 ICU beds, and keep the OB unit at 20 beds); reduce the cost by approximately \$85 million; and reduce the size by about 90,000 square feet. It was noted that the ownership structure (Applicants) would not change nor would the location.



Health Care Consulting

Michael Constantino

July 15, 2011

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Specifically, the Applicant asked: If the Applicant reduces the number of beds, the square footage, and the cost of the project, and such modification clearly does not meet any of the items of a "Type A" modification as specified in the HFSRB rules, then will the State follow their rules and fully treat this modification as a "Type B" modification? Specifically, if the modification is classified as a Type B modification, then another public hearing will not be offered in accordance with the Board's rules. General Counsel stated that because of the extent of the modification a public hearing might be necessary, particularly if one were requested. State Staff also concluded that under current HFSRB rules, an Intent to Deny limits public comment to the Applicants only. Mr. Grikis requested a determination that the Board follows its rules (presuming the modification is presented as stated herein) and the opportunity for yet another public hearing not be offered. General Counsel asked for such a request of his office to be put in writing.

State Staff advised that should the Applicant modify its application in the manner outlined, it would like to see the modification in the form of a "completed" CON application which would replace the existing application on file. It was explained that this would provide for the simplest translation of material for State Staff to review and ultimately for State Board members so that they do not need to switch between the original CON application and the proposed modification in considering the Project. The staff also requested that the Applicants address the Safety Net Impact Response submitted by Arnstein & Lehr to the State Agency on June 2, 2011, and the 2010 McHenry County Healthy Community Study prepared by the University of Illinois. State Staff also explained the Inventory of Health Care Facilities and Services and Need Determination will not be available until the end of the year along with the Hospital Profile Information.

Subsequent to technical assistance meeting:

There appears to be a significant issue in the State Staff and General Counsel's interpretation of the HFSRB's rules. Specifically, as was stated herein, State Staff and General Counsel had determined at the meeting that under current HFSRB rules, an Intent-to-Deny limits public comment to the Applicants only. This is not correct. Under section 1130.995, after an Intent-to-Deny ruling, the full public comment period is extended until 20-days before the Project's final determination by the Board. Therefore, the concern that the public will not have the opportunity to comment on such an extensive project modification is unfounded. The public will have the opportunity to address the HFSRB prior to the Project being heard for final consideration should recent HFSRB processes be continued.

On behalf of the Applicant, thank you for the opportunity to meet with you and your associates. If you should have any questions or concerns regarding these notes, please do not hesitate to contact me.

Sincerely,

John P. Kniery
Health Care Consultant

C: Rich Gruber, VP Mercy
Linas Grikis, Attorney at Law
Dan Colby, VP Mercy